Office-Supreme Court, U.S.
FILED
OCT 22 1981
ALEXANDER L. STEVAS,
CLERK

No. 80-1464

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

JAMES G. WATT, SECRETARY OF THE INTERIOR, ET AL.,
Petitioners

v.

ENERGY ACTION EDUCATIONAL FOUNDATION, ET AL.,
Respondents

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

---

MOTION FOR LEAVE TO FILE AFFIDAVITS FROM OFFICERS OF INDEPENDENT OIL COMPANIES THAT BEAR UPON A QUESTION POSED BY THE COURT AT ORAL ARGUMENT

JOSEPH L. RAUH, JR.
JOHN SILARD *

RAUH, SILARD AND LICHTMAN, P.C.
1001 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 331-1795

JONATHAN D. SCHILLER

ROGOVIN, HUGE & LENZNER
1730 Rhode Island Avenue, N.W.
Suite 1100
Washington, D.C. 20036

Attorneys for Respondents

* *Counsel of Record*

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

No. 80-1464

JAMES G. WATT, SECRETARY OF THE INTERIOR, ET AL.,
Petitioners

v.

ENERGY ACTION EDUCATIONAL FOUNDATION, ET AL.,
Respondents

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

---

MOTION FOR LEAVE TO FILE AFFIDAVITS FROM OFFICERS OF INDEPENDENT OIL COMPANIES THAT BEAR UPON A QUESTION POSED BY THE COURT AT ORAL ARGUMENT

Pursuant to Rule 42 of the Rules of this Court, Respondents respectfully request leave to file the following Affidavits:

Affidavit of Robert S. Friedenberg, President
Seahawk Oil International, Inc.

Affidavit of Arnold Berkowitz, President
Atlantic Sun Oil Company

Affidavit of Richard G. Johnson, President
Western Energy Consultants, Inc.

Affidavit of W.E. Richardson, President
Mission Exploration Inc.

Affidavit of Lloyd S. Grearson, President
Pan Energy Resources, Inc.

Affidavit of David A.C. Clark, President
Albion International Resources, Inc.

These affidavits, which are attached as an appendix hereto, discuss events following the oral argument in this case that bear upon a question posed by Justice Stevens during argument on October 5, 1981. In support of this Motion, Respondents state as follows:

1. At argument in this case on October 5, 1981, Justice Stevens questioned Respondents' counsel about the absence of oil producers from the plaintiff group. Reports of that question were published in the press, including a report in *The Oil and Gas Journal* dated October 12, 1981, which was read by affiants, officers of independent oil companies. Affiants, who had no previous contact with this case or the parties, contacted Respondents after reading the article.

2. As the affidavits indicate, these companies, which participate in Outer Continental Shelf ("OCS") lease sales conducted by the United States, wish to bring to the Court's attention their vital interest in Respondents' expeditious use of non-bonus bid systems for the sale of Outer Continental Shelf oil and gas leases. In addition, the affiants wish to explain to the Court their absence from this proceeding, of which they learned for the first time through the recent press reports, and their intention promptly to seek to intervene in the ongoing proceeding in the District Court.

3. Rule 35 of the Rules of this Court permits a party, by leave of Court, to present to the Court in a supplemental brief intervening matters that were not available in time to have been included in the brief in chief. The attached affidavits fall within the ambit of intervening matters in that the affiants provide new and pertinent in-

formation that is responsive to the Court's inquiry at oral argument and may assist the Court in its disposition of the questions presented. Because the affidavits are clear as to the relevance of the facts presented therein to the case at bar, Respondents do not believe it is necessary or appropriate to file a supplemental brief in accompaniment of the affidavits.

For the foregoing reasons, Respondents respectfully request that the instant motion be granted.

Respectfully submitted,

JOSEPH L. RAUH, JR.
JOHN SILARD *

RAUH, SILARD AND LICHTMAN, P.C.
1001 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 331-1795

JONATHAN D. SCHILLER

ROGOVIN, HUGE & LENZNER
Suite 1100
1730 Rhode Island Avenue, N.W.
Washington, D.C. 20036

Attorneys for Respondents

* *Counsel of Record*

APPENDIX

APPENDIX

SUPREME COURT OF THE UNITED STATES

No. 80-1464

JAMES G. WATT, Secretary of the Interior, *et al.*
Petitioners,

v.

ENERGY ACTION EDUCATIONAL FOUNDATION, *et al.*
Respondents.

STATE OF CALIFORNIA)
) ss:
ORANGE COUNTY)

AFFIDAVIT OF ROBERT S. FRIEDENBERG

I, Robert S. Friedenberg, having been duly sworn, do hereby state as follows:

1. I am the president of Seahawk Oil International, Inc. (Seahawk), a New Jersey corporation with headquarters in Newport Beach, California.

2. Seahawk's business includes the acquisition of oil and gas exploratory licenses, permits and leases that allows the company to participate in oil and gas exploratory development operations. The company participates in Outer Continental Shelf oil and gas lease sales conducted by the United States.

3. On October 13, 1981, I read an article entitled "High Court Hears OCS Bidding Case" that appeared in the *Oil and Gas Journal* dated October 12, 1981. A copy of the article is attached hereto. The article indicated that the case was before the Court for the Court's review of the question of "whether the Interior Secretary is required or is merely permitted to experiment with alternate OCS bidding systems.

* * * *

They [alternative bidding systems] include non-bonus systems such as profit share and work commitment bid-

ding to permit smaller companies to compete more easily than they might under the usual bonus bidding with fixed royalties." The article also reported a statement attributed to Justice Stevens as follows:

> "If bidding systems inequities are so bad, Justice John Paul Stevens said, 'it is curious there are no oil companies to share your view' and join in the lawsuit."

4. Because Seahawk is very much interested in the government's use of alternate bidding systems in place of the cash bonus system, I telephoned the offices of the Energy Action Foundation in Washington, D.C. the same day to inquire about the lawsuit referenced in the article and to ascertain whether it would be possible to bring to the Court's attention the vital interest of Seahawk, and similar companies with which we are in contact, in the expeditious use of non-bonus bid systems for the sale of OCS oil and gas leases. The utilization of such systems will increase substantially our opportunity to participate successfully in such sales. Before telephoning Energy Action on October 14, 1981, I had no prior contact with them or any other party to the litigation, nor was I aware of the lawsuit itself.

5. Because the comment attributed to Justice Stevens in the *Oil and Gas Journal* article raises a question about the non-participation in the litigation of companies such as Seahawk, I wish the Court to understand that I am now advised for the first time of the pendency of this litigation and that Seahawk intends promptly to apply to intervene in the ongoing lawsuit in the District Court.

/s/ Robert S. Friedenberg
ROBERT S. FRIEDENBERG

Sworn and subscribed to before me this 16 day of October, 1981.

/s/ Linda L. Smith
Notary Public

HIGH COURT HEARS OCS ALTERNATIVE BIDDING CASE

In the first case of the fall term, the U.S. Supreme Court last week heard arguments over whether the Interior secretary is required or is merely permitted to experiment with alternative OCS bidding systems.

The 1978 Outer Continental Shelf Lands amendments required the Interior secretary to experiment with five alternative bidding methods for offshore lease sales.

They included nonbonus systems such as profit share and work commitment bidding to permit smaller companies to compete more easily than they might under the usual bonus bidding with fixed royalties.

Energy Action Foundation, California Lands Commission, and city of Long Beach sued Interior Sec. James Watt earlier this year to force him to use the alternative systems and won an appeals court ruling.

Justice Department attorney Louis Claiborne told the Supreme Court Interior has examined the alternative bidding systems and has decided "they will not produce the desired results" in increasing offshore development and intercompany competition.

"What deters the smaller firms is the enormous cost and risk," he said.

Claiborne added that if anyone has a complaint about the use of bidding systems it should be Congress—which wrote the law—and "Congress so far has been content to leave well enough alone."

John Silard, a Washington attorney for Energy Action, argued that the Energy secretary was required by law to experiment with the systems for 5 years and that he doesn't have the option to reject the new bidding methods yet.

He quoted Watt as telling a congressional committee 3 months ago that the alternative bidding systems are "failures."

The lawyer declared the Reagan administration is interested only in raising "up front money to help balance the budget" and not improvement of competition in offshore development.

Silard conceded that the law may not require Interior to try all of the alternative bidding systems, but it clearly demands that it experiment with at least a couple of those alternatives.

If bidding system inequities are so bad, Justice John Paul Stevens said, "it is curious there are no oil companies to share your view" and join in the lawsuit.

A decision in the case is not expected for several months. (Emphasis supplied.)

SUPREME COURT OF THE UNITED STATES

No. 80-1464

JAMES G. WATT, Secretary of the Interior, *et al.*
Petitioners,

v.

ENERGY ACTION EDUCATIONAL FOUNDATION, *et al.*
Respondents.

STATE OF CALIFORNIA)
) ss:
ORANGE COUNTY)

AFFIDAVIT OF W. E. RICHARDSON

I, W. E. Richardson, having been duly sworn, do hereby state as follows:

1. I am the president of Mission Exploration Inc., a [Texas] corporation with headquarters in Houston, Texas.

2. Mission's business includes the acquisition of oil and gas exploratory licenses, permits and leases that allows the company to participate in oil and gas exploratory development operations. The company participates in Outer Continental Shelf oil and gas lease sales conducted by the United States.

3. On October 13, 1981, I received from Robert Friedenberg, the President of Seahawk Oil International, Inc., a copy of an article entitled "High Court Hears OCS Bidding Case" that appeared in the *Oil and Gas Journal* dated October 12, 1981. A copy of the article is attached hereto. The article indicated that the case was before the Court for the Court's review of the question of "whether the Interior Secretary is required or is merely permitted to experiment with alternate OCS bidding systems.

* * * *

They [alternative bidding systems] include non-bonus systems such as profit share and work commitment bidding to permit smaller companies to compete more easily than they might under the usual bonus bidding with fixed royalties." The article also reported a statement attributed to Justice Stevens as follows:

> "If bidding system inequities are so bad, Justice John Paul Stevens said, 'it is curious there are no oil companies to share your view' and join in the lawsuit."

4. I wish to bring to the Court's attention the vital interest of Mission in the expeditious use of non-bonus bid systems for the sale of OCS oil and gas leases. The utilization of such systems will increase substantially our opportunity to participate successfully in such sales.

5. Prior to my execution of this Affidavit, I had no contact with any party to the litigation, nor was I aware of the pendency of the lawsuit before the United States District Court in the District of Columbia. Because the comment attributed to Justice Stevens in the *Oil and Gas Journal* article raises a question about the non-participation in the litigation of companies such as Mission, I wish the Court to understand that I am now advised for the first time of the pendency of this litigation and that Mission intends promptly to seek to intervene in the ongoing lawsuit in the District Court.

/s/ William E. Richardson

Sworn and subscribed to before me this 16 day of October, 1981.

/s/ Linda L. Smith
Notary Public

SUPREME COURT OF THE UNITED STATES

No. 80-1464

JAMES G. WATT, Secretary of the Interior, *et al.*
Petitioners,

v.

ENERGY ACTION EDUCATIONAL FOUNDATION, *et al.*
Respondents.

STATE OF CALIFORNIA)
) ss:
ORANGE COUNTY)

AFFIDAVIT OF ARNOLD BERKOWITZ

I, Arnold Berkowitz, having been duly sworn, do hereby state as follows:

1. I am the president of *Atlantic Sun Oil Co.*, a [Pennsylvania] corporation with headquarters in Philadelphia, Pennsylvania.

2. Atlantic's business includes the acquisition of oil and gas exploratory licenses, permits and leases that allows the company to participate in oil and gas exploratory development operations. The company participates in Outer Continental Shelf oil and gas lease sales conducted by the United States.

3. On October 13, 1981, I received from Robert Friedenberg, the President of Seahawk Oil International, Inc., a copy of an article entitled "High Court Hears OCS Bidding Case" that appeared in the *Oil and Gas Journal* dated October 12, 1981. A copy of the article is attached hereto. The article indicated that the case was before the Court for the Court's review of the question of "whether the Interior Secretary is required or is merely permitted to experiment with alternate OCS bidding systems.

• • • •

They [alternative bidding systems] include non-bonus systems such as profit share and work commitment bidding to permit smaller companies to compete more easily than they might under the usual bonus bidding with fixed royalties." The article also reported a statement attributed to Justice Stevens as follows:

> "If bidding system inequities are so bad, Justice John Paul Stevens said, 'it is curious there are no oil companies to share your view' and join in the lawsuit."

4. I wish to bring to the Court's attention the vital interest of Atlantic in the expeditious use of non-bonus bid systems for the sale of OCS oil and gas leases. The utilization of such systems will increase substantially our opportunity to participate successfully in such sales.

5. Prior to my execution of this Affidavit, I had no contact with any party to the litigation, nor was I aware of the pendency of the lawsuit before the United States District Court in the District of Columbia. Because the comment attributed to Justice Stevens in the *Oil and Gas Journal* article raises a question about the non-participation in the litigation of companies such as Atlantic, I wish the Court to understand that I am now advised for the first time of the pendency of this litigation and that Atlantic intends promptly to seek to intervene in the ongoing lawsuit in the District Court.

/s/ Arnold Berkowitz

Swon and subscribed to before me this 16 day of October, 1981.

/s/ Linda L. Smith
Notary Public

SUPREME COURT OF THE UNITED STATES

No. 80-1464

JAMES G. WATT, Secretary of the Interior, *et al.*
Petitioners,

v.

ENERGY ACTION EDUCATIONAL FOUNDATION, *et al.*
Respondents.

STATE OF CALIFORNIA)
) ss:
ORANGE COUNTY)

AFFIDAVIT OF RICHARD G. JOHNSON

I, Richard G. Johnson, having been duly sworn, do hereby state as follows:

1. I am the president of Western Energy Consultants, Inc., a California corporation with headquarters in Newport Beach, California.

2. Western's business includes the acquisition of oil and gas exploratory licenses, permits and leases that allows the company to participate in oil and gas exploratory development operations. The company participates in Outer Continental Shelf oil and gas lease sales conducted by the United States.

3. On October 16, 1981, I received from Robert Friedenberg, the President of Seahawk Oil International, Inc., a copy of an article entitled "High Court Hears OCS Bidding Case" that appeared in the *Oil and Gas Journal* dated October 12, 1981. A copy of the article is attached hereto. The article indicated that the case was before the Court for the Court's review of the question of "whether the Interior Secretary is required or is merely permitted to experiment with alternate OCS bidding systems.

• • • •

They [alternative bidding systems] include non-bonus systems such as profit share and work commitment bidding to permit smaller companies to compete more easily than they might under the usual bonus bidding with fixed royalties." The article also reported a statement attributed to Justice Stevens as follows:

> "If bidding system inequities are so bad, Justice John Paul Stevens said, 'it is curious there are no oil companies to share your view' and join in the lawsuit."

4. I wish to bring to the Court's attention the vital interest of Western in the expeditious use of non-bonus bid systems for the sale of OCS oil and gas leases. The utilization of such systems will increase substantially our opportunity to participate successfully in such sales.

5. Prior to my execution of this Affidavit, I had no contact with any party to the litigation, nor was I aware of the pendency of the lawsuit before the United States District Court in the District of Columbia. Because the comment attributed to Justice Stevens in the *Oil and Gas Journal* article raises a question about the non-participation in the litigation of companies such as Western, I wish the Court to understand that I am now advised for the first time of the pendency of this litigation and that Western intends promptly to seek to intervene in the ongoing lawsuit in the District Court.

/s/ Richard G. Johnson

Sworn and subscribed to before me this 16 day of October, 1981.

/s/ Linda L. Smith
Notary Public

SUPREME COURT OF THE UNITED STATES

No. 80-1464

JAMES G. WATT, Secretary of the Interior, *et al.*
Petitioners,
v.
ENERGY ACTION EDUCATIONAL FOUNDATION, *et al.*
Respondents.

STATE OF CALIFORNIA)
) ss:
ORANGE COUNTY)

AFFIDAVIT OF LLOYD S. GREARSON

I, Lloyd S. Grearson, having been duly sworn, do hereby state as follows:

1. I am the President of Pan Energy Resources, Inc., a Pennsylvania corporation with headquarters in *West Chester*, Pennsylvania.

2. Pan Energy's business includes the acquisition of oil and gas exploratory licenses, permits and leases that allows the company to participate in oil and gas exploratory development operations. The company participates in Outer Continental Shelf oil and gas lease sales conducted by the United States.

3. On October 16, 1981, I received from Robert Friedenberg, the President of Seahawk Oil International, Inc., a copy of an article entitled "High Court Hears OCS Bidding Case" that appeared in the *Oil and Gas Journal* dated October 12, 1981. A copy of the article is attached hereto. The article indicated that the case was before the Court for the Court's review of the question of "whether the Interior Secretary is required or is merely permitted to experiment with alternate OCS bidding systems.

* * * *

They [alternate bidding systems] include non-bonus systems such as profit share and work commitment bidding to permit smaller companies to compete more easily than they might under the usual bonus bidding with fixed royalties." The article also reported a statement attributed to Justice Stevens as follows:

> "If bidding system inequities are so bad, Justice John Paul Stevens said, 'it is curious there are no oil companies to share your view' and join in the lawsuit."

4. I wish to bring to the Court's attention the vital interest of Pan Energy in the expeditious use of non-bonus bid systems for the sale of OCS oil and gas leases. The utilization of such systems will increase substantially our opportunity to participate successfully in such sales.

5. Prior to my execution of this Affidavit, I had no contact with any party to the litigation, nor was I aware of the pendency of the lawsuit before the United States District Court in the District of Columbia. Because the comment attributed to Justice Stevens in the *Oil and Gas Journal* article raises a question about the non-participation in the litigation of companies such as Pan Energy, I wish the Court to understand that I am now advised for the first time of the pendency of this litigation and that Pan Energy intends promptly to seek to intervene in the ongoing lawsuit in the District Court.

/s/ Lloyd S. Grearson

Sworn and subscribed to before me this 16 day of October, 1981.

/s/ Linda L. Smith
Notary Public

SUPREME COURT OF THE UNITED STATES

No. 80-1464

JAMES G. WATT, Secretary of the Interior, *et al.*
Petitioners,
v.
ENERGY ACTION EDUCATIONAL FOUNDATION, *et al.*
Respondents.

STATE OF CALIFORNIA)
) ss:
ORANGE COUNTY)

AFFIDAVIT OF DAVID A. C. CLARK

I, David A. C. Clark, having been duly sworn, do hereby state as follows:

1. I am the president of Albion Int'l Resources, Inc. a Deleware corporation with headquarters in Newport Beach California.

2. Albion's business includes the acquisition of oil and gas exploratory licenses, permits and leases that allows the company to participate in oil and gas exploratory development operations. The company participates in Outer Continental Shelf oil and gas lease sales conducted by the United States.

3. On October 16, 1981, I received from Robert Friedenberg, the President of Seahawk Oil International, Inc., a copy of an article entitled "High Court Hears OCS Bidding Case" that appeared in the *Oil and Gas Journal* dated October 12, 1981. A copy of the article is attached hereto. The article indicated that the case was before the Court for the Court's review of the question of "whether the Interior Secretary is required or is merely permitted to experiment with alternate OCS bidding systems.

* * * *

They [alternative bidding systems] include non-bonus systems such as profit share and work commitment bidding to permit smaller companies to compete more easily than they might under the usual bonus bidding with fixed royalties." The article also reported a statement attributed to Justice Stevens as follows:

> "If bidding system inequities are so bad, Justice John Paul Stevens said, 'it is curious there are no oil companies to share your view' and join in the lawsuit."

4. I wish to bring to the Court's attention the vital interests of Albion in the expeditious use of non-bonus bid systems for the sale of OCS oil and gas leases. The utilization of such systems will increase substantially our opportunity to participate successfully in such sales.

5. Prior to my execution of this Affidavit, I had no contact with any party to the litigation, nor was I aware of the pendency of the lawsuit before the United States District Court in the District of Columbia. Because the comment attributed to Justice Stevens in the *Oil and Gas Journal* article raises a question about the non-participation in the litigation of companies such as Albion, I wish the Court to understand that I am now advised for the first time of the pendency of this litigation and that Albion intends promptly to seek to intervene in the ongoing lawsuit in the District Court.

/s/ David A.C. Clark
DAVID A.C. CLARK

Sworn and subscribed to before me this 16th day of October, 1981.

/s/ Linda L. Smith
Notary Public